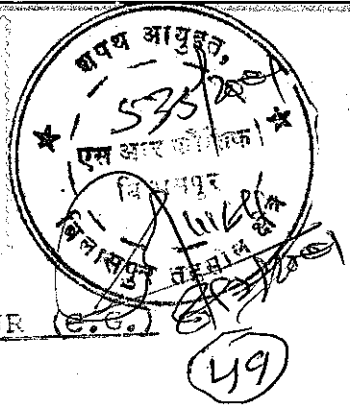
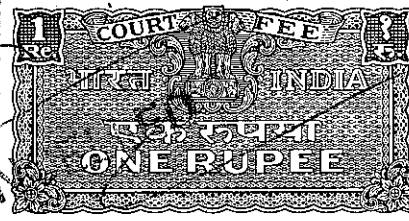
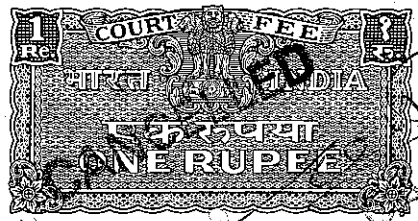




Listed before Hon'ble Justice K
Shri R.S. Garg on 9/2/2001
at MH No 11

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION 57/2000

PETITIONER

: Smt. Girija Tiwari

V e r s u s

RESPONDENT

: Gurubachan Singh,
Incharge - Addl.S.P.
Jagdarpur (Bastar)

AFR

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.57/2000

Smt.Girija Tiwari

=Vs=

State of Chhattisgarh & ors.

MORAL ORDER
(02-05-2001)

On 30-11-2000, after going through the case diary, this Court had made number of observations. This Court recorded that the accused persons were taken into custody and were kept in lock-up on 13-11-2000 but their arrest memos were prepared on 14-11-2000. This Court also recorded that on 13th, no information was given to the parents/relations of the accused persons that they have been taken into custody. This Court also recorded that in relation to accused Neeraj Tiwari, two arrest memos were available on the record. One was showing that the arrest was effected at 1600 hours while the other was showing the arrest at 1530 hours. This Court also noticed that in each of the arrest memo, there was over-writing in the column provided for time of arrest. The said two Police Officers were given number of opportunities to explain their conduct and to explain before this Court as to why such actions were taken by them, but every time they submitted to the Court that in haste they committed certain mistakes which are bona-fide.

(2) While going through the case diary, I found that atleast 3 accused were taken into custody on 13th itself, but no arrest Panchnama was prepared on the said date. Mr. Satish Bajpai, Town Inspector, Bemetara, on being asked as to why the arrest Panchnama was not prepared on 13th itself, he says that but for the S.D.O(P) none other had right to make investigation into the matter, therefore, he did not prepare the Panchnama. The explanation is false because the very first line of the case diary says that the matter was taken up for investigation by Mr. Bajpai. The very first line recorded on 14-11-2000 again says that the diary was opened on 14-11-2000 for investigation. In open Court in the presence of learned Deputy Advocate General, Shri Bajpai stated that two of the accused persons were caught on the spot and were brought to the Police Station and third came to the Police Station later on, but unfortunately the diary says that a search was made for these three accused persons and they were arrested or apprehended in the market. These three persons were available to the Police and were kept in the lock-up on 13th itself. Undisputedly, no arrest Panchnama was prepared on 13th and no information was sent to the relations of the accused persons on 13th itself. The diary of 14th says that Mr. Bajpai sent a wireless message to Gurubachan Singh, S.D.O(P) regarding the report on which Mr. Gurubachan Singh assured him that he would come back immediately and proceed with the investigation. From the diary, it appears that Mr. Gurubachan Singh came to Police Station at about 1400 hours and called the complainant and his sister, recorded their statements

u/s 161 Cr.P.C. and proceeded to the spot. On being asked, in open Court Mr. Gurubachan Singh says that he was informed by Mr. Bajpai that all the accused persons were in the police lock-up right from 13th. The case diary contains as many as 5 arrest memos. 4 are in original while the 5th is a photostat copy. The photostat copy shows that the time of arrest of Neeraj Tiwari was 1600 hours while the original with the over-writing says that said Neeraj Tiwari was taken into custody at 1530 hours. It also conspicuously appears from the arrest memorandums that each of the memorandum contains over-writing in the column provided for the time of arrest. I repeatedly asked Mr. Gurubachan Singh as to why there is over-writing in each of the arrest memo. He simply stated that by some mistake he made over-writing in the arrest memorandums. It is also to be seen that in the diary of 14-11-2000 the time of arrest was shown as 1600 hours, but it was later on deleted and was shown as 1530 hours. Mr. Gurubachan Singh says that after making corrections in the arrest memos he made the corrections in the case diary. I am at a loss to understand as to why corrections in each of the memorandum and case diary were required. Mr. Gurubachan Singh admitted in the Court that after preparation of the Panchnamas, the daily proceedings or the actions taken are recorded in the case diary. The Panchnamas if already had the over-writings at the time of preparation before writing the diary, then, the time as shown in the corrected arrest memorandums could be mentioned in the case diary. Once it is found that the time of arrest was corrected in the memorandum and thereafter, a correction was made in the case diary,

then there is no escape, but to hold that the entries were made in the Panchnama and the case diary at a subsequent stage.

(3) Bemetara is at a distance of 70 K.Ms. from the District Headquarters at Durg. On a vehicle the distance could be covered within two hours, these two police officers did not produce the accused persons before the C.J.M., Durg, but produced these 4 accused persons before the A.C.J.M., Bemetara. The officers admit before me that they knew well that the son of the said Judicial Officer was the complainant. I do not know that what persuaded these two officers to produce these 4 accused persons before the Judicial Officer whose son was the complainant and unfortunately these officers are not ready to assign any reason. Mr. Gurubachan Singh says that he knew that the said Judicial Officer could not try the offence, but he did not know whether such officer could grant remand or not. The case diary does not say that being in the horns of dilemma, these two police officers ever sought any advice from their superior officers. The records show that the accused persons were produced before the Addl. Chief Judicial Magistrate, Bemetara, at 7 p.m. who in his turn granted the transitory remand and required the Police to produce the accused persons before the Chief Judicial Magistrate, Durg. I am again at a loss and am unable to understand as to why within 3 1/2 hours from the time of alleged arrest, the accused persons could not be produced before the C.J.M. Undisputedly, one of the accused is below 16 years of age. He was required to be produced before the juvenile Court, but these Police officers did not produce that juvenile before the competent authority, for the reasons best known to them.

(4) I repeatedly enquired from Mr. Gurubachan Singh that if the accused persons were in custody on 14th as they were already taken into custody on 13th by Shri Satish Bajpai, then, why he did not record this fact in the case diary, he simply stated that they were in custody, but were not arrested. Such a reply from a Police Officer having 35 years of service, is not palatable. Once the movements of a person are restricted and he is put in the lock-up, then, he is deemed to be arrested and a formal arrest memo is not required.

(5) From the records, it would appear that the accused persons were taken into custody on 13th and upto 1600 hours of 14-11-2000, their arrests were not shown. It would be legitimate on my part to hold that the accused persons were kept in a wrongful confinement without any authority of law.

(6) From the records, it would also appear that these two officers were preparing false Panchnamas and were not discharging their duties in accordance with law. Forgery in the case diary and in the Panchnamas is writ large. With the naked eyes, one can see that to suit their ulterior motives, Mr. Gurubachan Singh and Mr. Satish Bajpai made certain false entries and made purposeful interpolations in the documents. It is not expected of a Police Officer that to please some one or to take revenge against some body, he would act in such an illegal manner. When I asked Mr. Gurubachan Singh as to why he committed all these acts, he was unable to give any answer and simply stated that some mistakes were committed by him and as he has very little time to retire, he be exempted. Mr. Bajpai on being asked to submit his explanation stated before the Court that barring the

records, he has no further explanation.

(7) The present diary and the conduct of these two Police Officers show a pathetic and sorry state of affairs. Whether these 4 persons committed the offence or not is yet to be decided by a competent Court, but these two Police Officers have already punished them. Prakash, Dheeraj, Avinash and Neeraj in the presence of these officers clearly stated that Mr. Satish Bajpai, Jhadu Singh, Ajit Mahobia, Itwari Ram and one Gangrade, all posted at Police Station Bemetara, manhandled them and used 3rd degree methods against them. I am not making any enquiry into the correctness of these allegations, but if it so happened, the Police atrocities can never be forgiven.

(8) This Court^{so} also the Supreme Court have repeatedly asked the Police Officers to conduct themselves properly. If the subordinate police staff feels that the code of conduct prepared by their own department or by the senior police officials does not bind them, then it is for the Higher Officers to take note of it, but these officers must not forget that the directions issued by this Court or by the Supreme Court are binding upon them. These officers not only committed serious lapses in discharge of their duties, but have committed the contempt of lawful authority of the Supreme Court by ignoring the mandatory directions issued by the Supreme Court in relation to arrest of the persons who are minors, in relation to supply of the information to the parents and relations of such accused persons, in relation to the third degree methods etc.

(9) Dr.N.K.Shukla, learned Deputy Advocate General, on being asked as to what action should be taken against these erring officers, stated that these 4 boys should be awarded proper compensation and the dead should be burried. I am unable to concede to later part of this request. The present is not a case where the dead should be burried, but present is a case which needs a further probe and absolute autopsy into the actions of these two officers.

(10) Taking into consideration the totality of the circumstances, it is hereby directed that the Superintendent of Police, Durg, shall register offences against these two officers and against others in relation to wrongful confinement and beating of these 4 children, creation of forged documents making interpolations in the diary and documents and further offences after recording the statements of these 4 persons who were kept into custody. If the Superintendent of Police finds that he is unable to make investigation, then, he may make a request to the Inspector General of Police of the circle who himself shall make the investigation and shall give his periodical report to this Court. A copy of this order be also sent to the Director General of Police and it is expected of him that he shall take suitable departmental action against these two erring officers. This Court, sincerely hopes that the higher police officers shall not show any favouritism in favour of these two officers, but while investigating would discharge their duty in accordance with law. The boys present in the Court if are advised, may submit their statements before the Superintendent of police in form of affidavit or in the form of writing duly

attested by the notary public so that at a later stage none can say that the statements recorded u/s 161 Cr.P.C. are different than the narration made in the High Court. If these boys submit such affidavits or the written statements then the same shall be kept on record by the Investigating Officer and the Court trying the offence may take into consideration the said statements at the time of the trial.

(11) Taking into consideration the totality of the circumstances and the manner in which these two officers wrongfully confined these 4 boys and prepared the forged panchnamas, I hereby direct each of the officer to pay Rs.5000/- to each of the complainant which means that each of the erring officer shall pay Rs.20,000/- and each of the complainant shall get Rs.10,000/- as compensation. Payment of this compensation shall not put an end to the rights of these 4 boys in claiming further compensation before a competent civil court, if the law permits them. It is further directed that the amount shall be paid by these two officers before the Special Judge (atrocities), Durg, within a period of 15 days and the said Judge shall be obliged to inform this Court about the compliance of this order. Non-compliance in relation to payment of compensation by these two officers shall be deemed to be a serious lapse on their part and they may be held liable under the provisions of the Contempt of Courts Act. All the 3 diaries in original are returned to Dr.Shukla, Dy.A.G. who shall keep the diaries in a sealed cover and send the same to the Superintendent of Police who shall open

82

-9-

the same, keep the Photostat copies of all those documents with him so that no further damage is done to these diaries.

The petition is disposed of.

C.C. within two days.

Sd/-
R.S. Garg
Judge

U2-05-2001

/Rao/

28/11/86